

**THE EFFECTIVE DATE OF THIS ORDINANCE IS SEPTEMBER 2, 2008**

**ORDINANCE NO. 08-23-499**

**Re: Comprehensive Zoning for the New Market Region of Frederick County**

**PREAMBLE**

WHEREAS, the Board of County Commissioners of Frederick County, Maryland indicated its interest in revisiting the New Market Region Comprehensive Plan and Comprehensive Rezoning and requested the Planning Commission to prepare an update to the Comprehensive Zoning of the New Market Planning Region, in accordance with the requirements contained in Article 66B, of the Annotated Code of Maryland; and

WHEREAS, in January 2007, the Planning Commission initiated a review of the Comprehensive Plan and Comprehensive Zoning process for the New Market Region; and

WHEREAS, the Planning Commission accepted numerous requests from property owners seeking to change the Comprehensive Plan designation of their properties and further received requests for changes from the Planning Department staff and County residents during the hearing process; and

WHEREAS, having held a public hearing on July 18, 2007 and public worksessions to review comments and testimony, the Planning Commission approved a Recommended Region Plan and Comprehensive Zoning Map for the New Market Planning Region on December 19, 2007; and

WHEREAS, the Board of County Commissioners was presented with an approved and recommended Region Plan and Comprehensive Zoning Map for the New Market Planning Region from the Planning Commission; and

WHEREAS, the Board of County Commissioners conducted public hearings on the New Market Region Plan and Comprehensive Zoning on February 26, 2008, and August 26, 2008, pursuant to public notice duly given; and

WHEREAS, after the public hearings, the Board of County Commissioners considered all of the recommendations of the Planning Commission, the Planning Staff, those comments received as part of the hearings of the Planning Commission and hearings before the Board of County Commissioners, and also reviewed written communications which were submitted concerning the Comprehensive Zoning by the adjoining planning jurisdictions, affected State and local agencies and interested persons, and the Board of County Commissioners conducted this review process in sessions open to the public; and

WHEREAS, as a result of the various public hearings, comments and correspondence received on this matter, the Board of County Commissioners made certain limited changes in the Planning Commission's recommended New Market Region Comprehensive Zoning Map; and

WHEREAS, the Board of County Commissioners finds that the Comprehensive Zoning Maps were prepared in accordance with the Comprehensive Plan and designed to control congestion in the streets, to secure the public safety, to promote health and the general welfare, to provide adequate light and air, to promote the conservation of natural resources, to prevent environmental pollution, to avoid undue concentration of

population, to facilitate the adequate provision of transportation, water, sewerage, schools, recreation, parks and other public requirements; and

WHEREAS, the Board of County Commissioners recognizes that numerous parcels of land have been incorporated into what is known as the Lake Linganore Planned Unit Development (PUD) and have been classified in the PUD floating zone classification beginning in 1968. (This PUD has been identified by various names over its history including “Lake Linganore at Eaglehead,” “Lake Linganore,” “Eaglehead,” and “Eaglehead-on-the-Lakes.” All of these refer to the same PUD. In this Ordinance “Lake Linganore” is used to identify this PUD); and

WHEREAS, the Board of County Commissioners finds that 40 years is sufficient, adequate and more than ample time for a PUD to complete its planned development and build out; and

WHEREAS, all of the Lake Linganore PUD has not been developed in 40 years; and

WHEREAS, the development of the Lake Linganore PUD as proposed in prior zoning approvals would have a substantial detrimental impact on public facilities including (by way of example and not limitation) roads, transportation, public schools, public water, public sewer, public parks, and law enforcement; and

WHEREAS, the public facilities (including those listed in the previous “Whereas” paragraph) are not adequate to serve the Lake Linganore PUD if developed as proposed in prior zoning approvals; and

WHEREAS, development of the Lake Linganore PUD as proposed in prior zoning approvals would not serve the purposes of state law (particularly Md. Annotated Code

Article 66B and the Smart Growth Initiatives articulated in the 8 Visions in Article 66B, § 1.01), County law (particularly the Zoning Ordinance Chapter 1 – 19 and the Adequate Public Facilities Ordinance Chapter 1 - 20) and the County Comprehensive Plan; and

WHEREAS, the Board of County Commissioners has fully considered all of the applicable criteria for establishing the density and land use intensity for a PUD specifically including the following statutory criteria for setting the density of a PUD as established in § 1-19-321(E) of the Frederick County Code:

- (1) Existing and planned availability of public services; and
- (2) Access to existing or planned major thoroughfares and transportation systems; and
- (3) The physical characteristics of the site with particular emphasis on restraints to development including steep slopes or floodplains; and
- (4) The shape of the tract of land; and
- (5) The proposed design of the PUD; and
- (6) Any other relevant information which may have a bearing on the development capacity of the PUD; and

WHEREAS, no building permits have been requested and no construction pursuant to a validly issued building permit has commenced on any of the Lake Linganore properties which were previously zoned PUD and are being reclassified as Agricultural by this Ordinance: and

WHEREAS, no vested rights have been obtained for the properties being reclassified to the Agricultural Zoning District as the term “vested rights” has been defined by the Maryland state courts; and

WHEREAS, the Board of County Commissioners finds that the Lake Linganore PUD as reclassified in this Ordinance can proceed as a single, integrated project

consistent with the County Zoning laws even though some portion of the land is being reclassified to the Agricultural Zoning District; and

WHEREAS, following the reclassification of a portion of the property to Agricultural, the properties constituting the entire Lake Linganore PUD (including the properties remaining PUD as well as the properties reclassified to Agricultural) continue to have a reasonable economic value and a reasonable use and are not denied all reasonable use of the property.

NOW, THEREFORE. BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND that the zoning map atlas pages (scale 1" = 1200") as identified herein are hereby adopted, containing the specific zoning classifications for the subject parcels within the New Market Region as shown thereon: being part or all of zoning atlas pages 59,60, 61, 68, 69, 70, 71, 78, 79, 80, 81, 86, 87, 88, 89, 90, 98, and 99.

AND BE IT FURTHER ENACTED AND ORDAINED that for only those areas classified in the Planned Unit Development (PUD) floating zone in the Lake Linganore PUD as shown on the zoning map atlas pages adopted by this Ordinance, the following terms and conditions shall apply:

1. The maximum land use density shall be 3.0 dwelling units per gross acre for those properties that have not been subdivided by recorded plat or developed pursuant to a validly issued building permit as of the effective date of this Ordinance;
2. In the Town Center, a maximum land use density of up to 5.0 dwelling units per gross acre shall be permitted provided that the dwelling units necessary to increase the density from 3.0 dwelling units per gross acre to up to 5.0 dwelling units per

gross acre are transferred to the Town Center from other areas of the Lake Linganore PUD. The permitted dwelling units in the transferring area shall thereby be reduced by an equal number of dwelling units. The Planning Commission and County staff shall establish requirements for tracking and recording the dwelling units transferred.

3. Both the transferring property and the receiving property shall be owned by the same entity.

4. In making a decision under the Adequate Public Facilities Ordinance (Chapter 1 – 20 of the Frederick County Code), the Planning Commission shall consider all such density transfers.

5. Any residential development of the Lake Linganore PUD shall provide for a mix of housing types and shall meet the following minimum (Min.) and maximum (Max.) requirements:

<b>Village/Land Bay</b>	<b>Dwelling Unit Mix</b>		
	<b>Single Family Detached</b>	<b>Single Family Attached</b>	<b>Multi-Family Including 2 over 2's</b>
Town Center	12.5% Min	17.5% Min	60% Max
Woodridge	30% Min	30% Min	
Hamptons South	25%Min	30%Min	40% Max
All Others	Dwelling Unit types shall be in keeping with the existing development pattern of the respective villages. The developer must establish that the proposed housing types are compatible with and in keeping with the character of the village and the existing mix of dwelling units.		

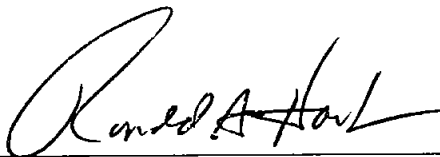
AND BE IT FURTHER ENACTED AND ORDAINED that those parcels which were rezoned prior to the date of this Ordinance and which have retained that prior zoning classification as part of this comprehensive rezoning, shall remain subject to any and all conditions which were imposed at the time of the prior zoning change.

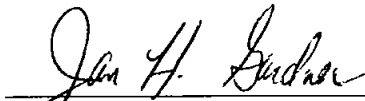
AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect on September 2, 2008.

The undersigned hereby certifies that this Ordinance was approved and adopted on the 2nd day of September, 2008.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF FREDERICK COUNTY, MARYLAND

  
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Ronald A. Hart  
County Manager

  
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Jan H. Gardner  
President 